



U.S. Department of Justice

Immigration and Naturalization Service

Z

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Tegucigalpa

Date: MAR 21 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §
212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
For Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Tegucigalpa, Honduras, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The decision of the officer in charge will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States by a consular officer under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation in 1991. The applicant is the unmarried son of a lawful permanent resident and is the beneficiary of an approved preference visa petition. The applicant seeks the above waiver in order to return to the United States.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

The appeal has been filed by an attorney whose standing in this matter has not been demonstrated by the filing of a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28). Further, the officer in charge makes reference to documentation contained in the applicant's alien file; including a decision by an immigration judge, a denial of an application for asylum, an application for withholding of deportation, a finding of deportability, the alien's deportation in September 1994, a death certificate of his mother and a visa petition which are not in the record for review.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision; including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney or Representative (Form G-28).
- (2) Brief, statement, and/or supporting evidence.
- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision.
- (7) Investigative reports and/or other derogatory information.
- (8) Application or petition (Form I-601).
- (10) Evidence in support of application or petition.

As constituted, the record fails to contain any evidence in support of the application which could be used in the adjudication process. Therefore, the officer in charge's decision will be withdrawn.

Further, the decision makes reference to the applicant having been previously deported. The record is silent as to whether the applicant remained outside the United States for a period of five years as required prior to April 1, 1997. If the applicant has remained abroad for the full five years then this issue is moot. However, if he did not do so and returned to the United States during that five-year period, Service instructions at O.I. 212.7 specify that he need to file a Form I-212 application which will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The appeal of the officer in charge's decision will be rejected, and the record remanded to the officer in charge so that he can adjudicate the case and enter a new decision based on documentation contained in a record of proceeding which can be properly reviewed by the Associate Commissioner. If that decision is adverse to the applicant, the officer in charge will certify his decision to the Associate Commissioner for review accompanied by a properly prepared record of proceeding.

ORDER: The appeal is rejected. The officer in charge's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.